



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE **OF** CALIFORNIA

In the Matter of the Appeal of)
MARY' JOAN LEONARD)

Appearances:

For Appellant: Mary Joan Leonard,
in pro. per.

For Respondent: Paul J. **Petrozzi**
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Mary Joan Leonard against a proposed assessment of additional personal income tax in the amount of \$258.54 for the year 1975.

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The question before us is **whether** appellant Mary Joan Leonard may deduct her summer travel expenditures as educational expenses under **Revenue** and Taxation Code section 17202.

Appellant is a high school teacher of United States history and American government, and also serves as a sponsor for her school's student exchange program. In the summer of 1975, appellant engaged upon an extensive tour of Ireland, England, France, Italy and Germany. Appellant traveled in these countries from, July 9 through August 23. The entire trip consisted of two tours--one to Ireland, and a second to other European countries as part of a Holy Year tour--and about 19 days of independent trips to places of special interest to appellant.

During **her** overseas travel, appellant viewed museum, art galleries, factories, artifacts and **many famous places**. **She also, on several occasions, visited with other** school teachers, both European and American, working in Europe. Appellant's employer did not require her to take the trip as a condition to maintaining her employment, pay or status. **However, her school board did approve of the travel.**

Appellant deducted **her travel costs as expenses** incurred in carrying on a trade or business within the meaning of Revenue and Taxation Code section 17202. Respondent disallowed the deduction and proposed additional tax. Appellant protested, and after a hearing on her protest, respondent affirmed its proposed assessment. This appeal followed.

In general, a taxpayer's expenditures for travel as a form of education shall be considered as primarily personal in nature **and therefore not deductible.** (Cal. Admin. Code, tit. 18, reg. 17202, subd. (e)(3).)^{1/} **Expenditures made for education undertaken primarily for the purpose of fulfilling the general educational aspirations or other personal purposes of the taxpayer are also not deductible.** (Cal. Admin. Code, tit. 18, reg. 17202, subd. (e)(Z).)^{2/} However,

^{1/} Repealer filed Feb. 21, 1979; effective thirty days thereafter. (Register 79, 'No. 7.)

^{2/} See footnote 1.

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expenditures for education are considered to be deductible business expenses if they are undertaken primarily for the purpose of maintaining or improving skills required by the taxpayer in his or her employment, or meeting the express requirements imposed by the taxpayer's employer for the retention of the taxpayer's salary, status or employment, ^{3/} _{4/} Cal. Admin. Code, tit. 18, reg. 17202, subd. (e) .)

In the instant case, appellant was not required to travel in order to retain her salary, status or employment. She therefore has the burden of establishing that the European trip was undertaken primarily to maintain or improve skills required in her employment, and that, consequently, the cost of the trip constituted an ordinary and necessary expense incurred in carrying on her profession. (Appeal of Robert C. and Joan E. Looney, Cal. St. Bd. of Equal., Aug. 30, 1967.) She must show that the major portion of her time while traveling was spent, not on ordinary tourism, but on activities that were so uniquely tailored to strengthen her teaching abilities that the expenditures are excepted from the general rule that educational travel is to be considered primarily personal.

Appellant maintains that her summer travel has improved her ability as a teacher and that, consequently, the costs thereof qualify as deductible educational expenses. Appellant's position appears to be that her first-hand acquaintance with the culture and history of the European countries she visited enhances her ability to present U.S. history effectively to her classes. We do not deny that appellant's travel may

3/ See footnote 1.

4/ The federal regulations were liberalized in 1967 by eliminating the "primary purpose" test and permitting a deduction for educational travel, provided it has a direct relationship with the taxpayer's employment or other trade or business. (See Treas. Reg. §1.162-5(d) (1967); Krist v. Commissioner, 483 F.2d 1345, 1348 (2nd Cir. 1973).) However, during the year on appeal, the Franchise Tax Board had not followed the lead of the Internal Revenue Service, and had retained the "primary purpose" test.

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have enriched her culturally and made her more capable intellectually. (Adelson v. United States, 342 F.2d 332 (9th Cir. 1965).) It remains, however, that travel may be educational and yet not be deductible. (Dennehy v. Commissioner, 309 F.2d 149 (6th Cir. 1962); Appeal of Richard T. and Helen P. Glycer, Cal. St. Bd. of Equal., Aug. 16, 1977; Appeal of John H. Roy, Cal. St. Bd. of Equal., March 8, 1976; Appeal of Robert C. and Joan E. Looney, supra.)

Appellant's trip -is similar to that of the taxpayer in Kenneth W. Allison, ¶ 77,277 P-H Memo. T.C. (1977). The taxpayer there was a high school teacher of U.S. government and U.S. history who took a critical and carefully documented European trip. The court held that since the taxpayer was not employed to teach European history or culture, there was an insufficient relation **between** the travel and his employment to make the travel expenses deductible. The analysis of that, case is applicable to the appellant herein. It must **therefore** be concluded that **appellant's** European trip was not undertaken primarily for the purpose of improving or maintaining the skills required in her employment as a teacher of U.S. history and U.S. government.

The fact that appellant's school board approved of her travel does not change the above conclusion. The school **board's** actions are not determinative of the deductibility of travel expenses. (Leo J. Roy, ¶ 69,115 P-H Memo. T.C. (1969).)

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Mary Joan Leonard against a proposed assessment of additional personal income tax in the amount of \$258.54 for the year 1975, be and the same is hereby sustained.

<u>Richard Nevins</u>	, Chairman
<u>George R. Reilly</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>William M. Bennett</u>	, Member
	, Member